

ORDINANCE NO. 3860

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO AMEND THE TEXT OF THE CITY ZONING ORDINANCE (CHAPTER 25 OF THE CITY CODE) TO INCLUDE REGULATIONS PERTAINING TO SMALL CELL TECHNOLOGY IN PUBLIC RIGHTS-OF-WAY, SAID TEXT AMENDMENTS TO BE INCORPORATED INTO THE CITY CODE AS ARTICLE XVI OF CHAPTER 25, AND TO AMEND THE USE REGULATIONS TABLE SET FORTH IN SECTION 25-132 ACCORDINGLY, BY MAKING SMALL CELL TECHNOLOGY STRUCTURES PERMITTED USES IN ALL ZONING DISTRICTS SUBJECT TO ARTICLE XVI."

**WHEREAS**, Title 4, Subtitle 2 of the Land Use Article of the Annotated Code of Maryland grants the Mayor and City Council the power to enact a zoning ordinance, to amend it from time to time, and to provide for its administration and enforcement.

**WHEREAS**, the Mayor and City Council deem it necessary for the purpose of promoting the health, safety, morals, and/or general welfare of the City to amend the City of Cumberland Zoning Ordinance from time to time.

**WHEREAS**, in connection with the foregoing, City staff prepared regulations pertaining to small cell technology in public rights-of-way and requested that the City of Cumberland Municipal Planning and Zoning Commission take the matter under consideration and recommend that the Mayor and City Council approve those revisions as text amendments to the City's Zoning Ordinance. Those revisions are set forth as an attachment to the Staff Report which is attached hereto.

**WHEREAS**, the Municipal Planning and Zoning Commission held a public hearing on the subject matter of this Ordinance on April 22, 2019, at which time they voted unanimously to recommend that the City Council approve the text amendments recommended in the aforesaid Staff Report, subject to changing the term "Wireline Backhaul Facility" set forth in Section 25-101(b)18) to "Wireless Backhaul Facility."

**WHEREAS**, the Mayor and City Council held a public hearing regarding the subject matter of this Ordinance on 9/17/19, having published notice of the time and place of the hearing together with a summary this Ordinance in the Cumberland Times-News, a newspaper of general circulation in the City of Cumberland, once each week for two successive weeks (on 9/3/19 and 9/10/19), the first such notice having been published at

least 14 days prior to the hearing, as required by Section 4-203(b) of the Land Use Article of the Annotated Code of Maryland.

**WHEREAS**, consistent with the recommendation of the Municipal Planning and Zoning Commission, the Mayor and City Council have determined that they should accept said recommendations as provided for below.

**NOW, THEREFORE:**

**SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND**, that the City Zoning Ordinance is hereby amended to include the regulations pertaining to small cell technology in public rights-of-way attached hereto as Article XVI of Chapter 25 of the City Code.

**SECTION 2: AND BE IT FURTHER ORDAINED**, that the Use Regulations Table set forth in Section 25-132 shall be amended to reflect that small cell technology structures shall be permitted uses in all zoning districts.

**SECTION 3: AND BE IT FURTHER ORDAINED**, that this Ordinance shall take effect ten (10) days from the date of its passage.

Passed this 15<sup>th</sup> day of October, 2019.

  
Raymond M. Morriss, Mayor

ATTEST:

  
Marjorie A. Woodring, City Clerk

## **CUMBERLAND PLANNING COMISSION STAFF REPORT**

### **Small Cell Regulations**

#### **Zoning Text Amendment 1208**

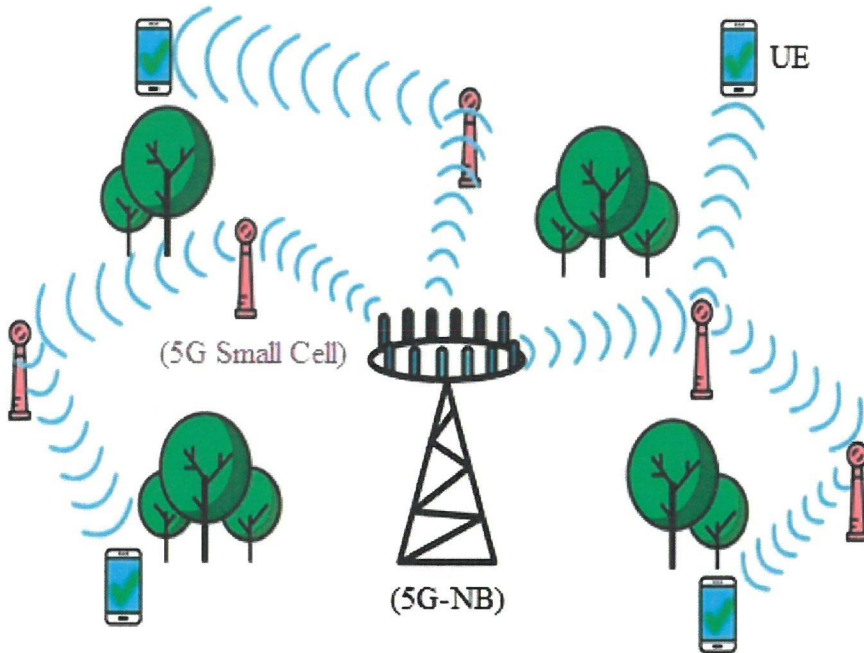
In order to understand how the 5G network will be constructed and what the subject of this staff report covers, the Planning Commission must understand what small cells are.

The 5G small cells are low power mini base stations spread across the region to be served. They are basically low power wireless APs (Access Points) which operate in licensed spectrum. They are managed by telecom operators. Due to their small sizes, they can be installed easily in indoor places and space constrained places also. Hence they help in improving the cellular coverage and to fill coverage holes.

Small cells are available throughout the region to be served and hence they maintain quality of the signal everywhere. Small cells receive the 5G signal from main NB and relay the same to users. When the user moves behind the obstacle, the cell phone automatically switches to mini Bas station i.e. small cell to keep the connection intact. This helps 5G users to avail uninterrupted 5G network coverage. The figure depicts the typical installed 5G network of small cells along with main 5G-NB (or 5G Base Station).

<http://www.rfwireless-world.com/Terminology/5G-Small-Cells-Basics-and-Types.html>

The following picture from the foregoing website, in a simplistic manner, shows how 5G networks work.



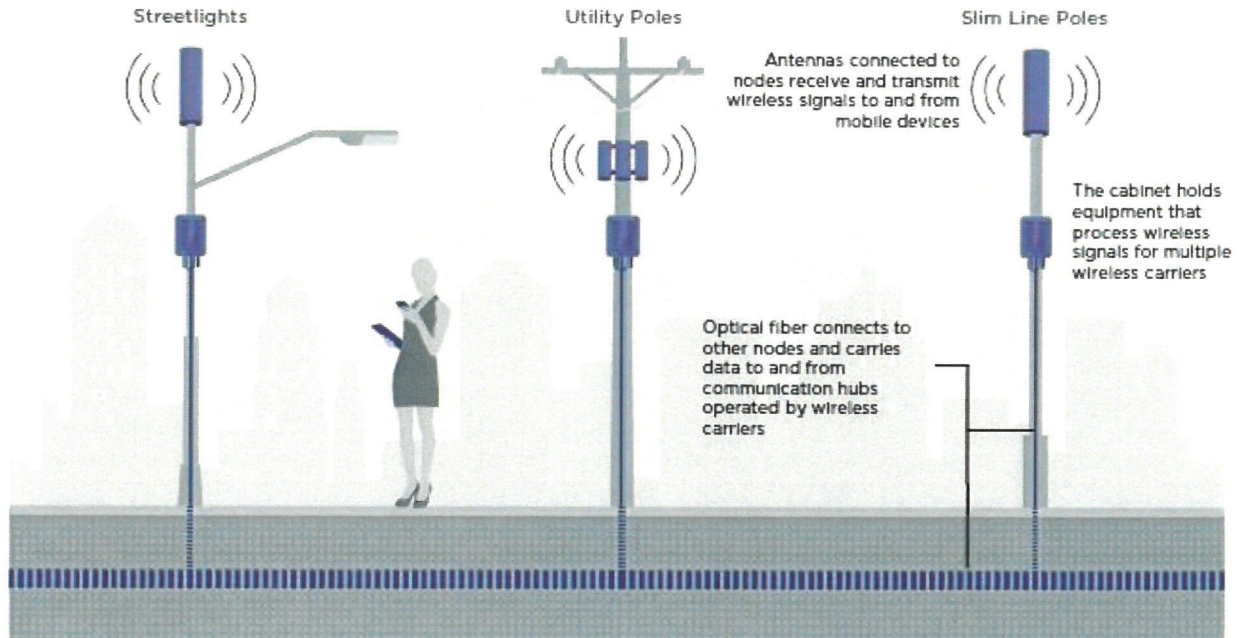
4G and prior iterations of cellular systems required large towers to transmit signal. Although 5G still requires large towers to transmit signal to small cell structures, those structures are capable of being located within rights of way in a somewhat inobtrusive manner.

The following picture shows the type of small cell structures the City is most likely going to see within its rights of way. Generally, there are three ways they can be deployed: by attachment to existing street light poles; by attachment to existing utility poles; and by means of new poles. The following picture shows these deployments.



# What Are Small Cell Deployments?

Small cell deployments are complementary to towers, adding much needed coverage and capacity to urban and residential areas, venues, and anywhere large crowds gather



The FCC entered a ruling requiring local governments to pass legislation aimed at speeding up the deployment of small cells and other 5G network equipment located within public rights of way. While this ruling is in the process of being appealed, it remains in effect, at least for the time being. For local governments' purposes, compliance is mandatory.

Page 2 of the FCC's Declaratory Ruling and Third Report and Order adopted September 26, 2018 includes the following introductory statement:

America is in the midst of a transition to the next generation of wireless services, known as 5G. These new services can unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country. The FCC is committed to doing our part to help ensure the United States wins the global race to 5G to the benefit of all Americans. Today's action is the next step in the FCC's ongoing efforts to remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new services. We proceed by drawing on the balanced and commonsense ideas generated by many of our state and local partners in their own small cell bills.

Local governments are **REQUIRED** to pass legislation implementing the FCC regulations (at least those relative to aesthetic reviews) by April 15, 2019. The City will not meet this deadline, but if the Planning Commission is inclined to recommend that the Mayor and City Council pass the proposed ordinance, the City Code (i.e., Chapter 25 which includes the City Zoning Ordinance) will be amended within what staff considers to be a safe window. It is staff's opinion that it is imperative that this Ordinance be passed as soon as possible without amendments or with minimal amendments that are consistent with FCC requirements so that the Mayor and City Council can proceed with its passage as soon as possible.

By way of background, the FCC rules generally provide:

1. They will not disturb existing small cell legislation at the state level but will provide guidance on local reviews of small cells that can inhibit deployment.
2. Local governments can charge wireless providers for the costs associated with reviewing small cell deployment, but excessive fees are prohibited.
3. Local governments will need to conduct approval processes within 60 days for small cells being added to existing structures and 90 days when a provider wants to put up a new small cell pole.
4. Local governments will be able to manage small cell deployments via "reasonable" aesthetic reviews.

It is staff's opinion that the proposed amendments to the text of the City's Zoning Ordinance meets these requirements.

A Planning Commission Action is attached hereto for your use upon the conclusion of the April 22, 2019 hearing relative to the foregoing.

**Planning Commission Action  
Meeting Date: April 22, 2019  
Zoning Text Amendment 1208**

Planning Commission Action  
Meeting Date: April 22, 2019  
Zoning Text Amendment 1208

- [ ] Recommend adoption of zoning text amendment 1208 relative to proposed small cell regulations as presented at the April 22, 2019 meeting, a copy of which is appended hereto, to the Mayor and City Council with no additional changes.
- [ ] Recommend adoption of the aforesaid zoning text amendments with the following changes:

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- [ ] Recommend denial of Zoning Text Amendment 1208.

Motion by: Aaron Hendrickson

Seconded by: Vic Rezendes

Vote:

In favor of motion: 5      Opposed: 0      Abstained: 0

Number of voting members present: 5

Signed: Ronald P. Wills

Chair, Cumberland Planning Commission

Date: April 22, 2019

Brian J. Smith  
Secretary, Cumberland Planning Commission

Date: April 22, 2019

**CUMBERLAND CODE – CHAPTER 25 (ZONING ORDINANCE), ARTICLE XVI  
PROPOSED ZONING TEXT AMENDMENTS REGARDING SMALL CELL  
TECHNOLOGY IN PUBLIC RIGHTS-OF-WAY**

**ARTICLE XVI. - SMALL CELL TECHNOLOGY IN PUBLIC RIGHTS-OF-WAY**

**Sec. 25-501. – Definitions.**

- (a) *General use of terms.*
  - (1) The terms, phrases, words, and their derivations used in this article shall have the meanings given in this section.
  - (2) Words not defined shall be given their common and ordinary meaning.
- (b) *Defined terms.*
  - (1) *Abandoned* means any Small Cell Facilities or Wireless Support Structures that are unused for a period of 365 days without the Operator otherwise notifying the City and receiving the City's approval.
  - (2) *Antenna* means communications equipment that transmits or receives radio frequency signals in the provision of small cell wireless service.
  - (3) *Applicant* means any Person applying for a Small Cell Permit hereunder.
  - (4) *City* means Mayor and City Council of Cumberland.
  - (5) *Collocation or Collocate* means to install, mount, maintain, modify, operate, or replace wireless facilities on a Wireless Support Structure.
  - (6) *Decorative Pole* means a pole, arch, or structure other than a street light pole placed in the Right of Way to specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following (a) electric lighting; (b) specially designed informational or directional signage; and (c) temporary holiday or special event attachments.
  - (7) *Design Guidelines* means those detailed design guidelines, specifications and examples set forth hereinafter in section 25-504 for the design and installation of Small Cell Facilities and Wireless Support Structures, which are effective insofar as they do not conflict with federal and state law, rule and regulations.
  - (8) *Operator* means a wireless service provider, cable operator, or a video service provider that operates a Small Cell Facility and provides wireless service. *Operator* includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the Telecommunications Act of 1996 (47 U.S.C. 153(2)), and services that are fixed in nature or use unlicensed spectrum.
  - (9) *Permittee* means the owner and/or Operator issued a Small Cell Permit pursuant to this article XVI of the Zoning Ordinance and the Design Guidelines.
  - (10) *Person* means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.
  - (11) *Right of Way* means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway,



public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the City.

- (12) *Small Cell Facility* means a facility, excluding a satellite television dish antenna, established for the purpose of providing wireless voice, data and/or image transmission within a designated service area. A Small Cell Facility must not be staffed, and consists of one or more antennas attached to a Wireless Support Structure. An Antenna or wireless Antenna base station which provides wireless voice, data and image transmission within a designated service area as part of a Small Cell Facility may consist of a low-powered access node with no more than five watts of transmitter output power per Antenna channel, and may not be larger than a maximum height of three (3) feet and a maximum width of two (2) feet. A small cell Antenna may be installed on existing rooftops, structures or support structures where permitted. A Small Cell Facility also consists of related equipment which may be located within a building, an equipment cabinet outside a building, an equipment cabinet on a rooftop that is at least fifteen (15) feet high when in a commercial zone or attached to a commercial structure, or twenty (20) feet high when in a residential zone or attached to a residential structure, or an equipment room within a building. Such related equipment shall have a maximum square footage of ten (10) square feet and a maximum height of two (2) feet.
- (13) *Small Cell Permit* means the non-exclusive grant of authority issued by the City to install a Small Cell Facility and/or a Wireless Support Structure in a portion of the Right of Way in accordance with these guidelines.
- (14) *Stealth Small Cell Wireless Facility*: Any Wireless Facility that is integrated as an architectural feature of a structure or the landscape so that the facility and its purpose to provide wireless services is not visually apparent or prominent.
- (15) *Utility Pole* means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs and Decorative poles.
- (16) *Wireless Facility* means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:
  - A. Any exterior facility, including an Antenna, Antenna array or other communications equipment. A Wireless Facility consists of one or more Antennas attached to a Wireless Support Structure and related equipment. Antennas are limited to the following types and dimensions: omni-directional (whip) Antennas not exceeding fifteen (15) feet in height and three (3) inches in diameter; directional or panel Antennas not exceeding six and one-half (6½) feet in height and two (2) feet in width. An Antenna may be

mounted to a building, a building rooftop or a freestanding monopole. Equipment may be located within a building, an equipment cabinet, or an equipment room within a building. Where reference is made to a Wireless Facility, unless otherwise specified or indicated by context, such reference will be deemed to include the Wireless Support Structure on which the Antenna or other communications equipment is mounted, transmission cables, and any associated equipment shelter.

B. The term does not include any of the following:

1. The structure or improvements on, under, or within which the equipment is Collocated;
2. Coaxial or fiber-optic cable that is between Wireless Support Structures or Utility poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.
3. Any exterior facility, including an Antenna, Antenna array or other communications equipment, excluding a satellite television dish antenna or Small Cell Facility, established for the purpose of providing wireless voice, data and image transmission within a designated service area and which includes equipment consisting of personal wireless services, as defined in the Federal Telecommunications Act of 1996, which includes Federal Communications Commission licensed commercial wireless telecommunications services, including cellular, personal communications services (PCS), specialized mobile radio (SMR) enhanced specialized mobile radio (ESMR), and paging, as well as unlicensed wireless services and common carrier wireless exchange access services and similar services that current exist or that may in the future be developed.. A Wireless Facility must not be staffed. A Wireless Facility consists of one or more Antennas attached to a support structure and related equipment. Antennas are limited to the following types and dimensions: omni-directional (whip) Antennas not exceeding fifteen (15) feet in height and three (3) inches in diameter; directional or panel Antennas not exceeding six and one-half (6½) feet in height and two (2) feet in width. An Antenna may be mounted to a building, a building rooftop or a freestanding monopole in accordance with the subsequent sections of this article XVI of the Zoning Ordinance. Equipment may be located within a building, an equipment cabinet, or an equipment room within a building. Where reference is made to a Wireless Facility, unless otherwise specified or indicated by context, such reference will be deemed to include the Wireless Support

Structure on which the Antenna or other communications equipment is mounted, transmission cables, and any associated equipment shelter.

- (17) *Wireless Support Structure* means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen (15)-foot or taller sign pole, or Utility pole capable of supporting Small Cell Facilities. *Wireless Support Structure* excludes (a) a Utility pole or other facility owned or operated by a municipal electric utility and (b) a Utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars and trolley buses.
- (18) *Wireless Backhaul Facility* means a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.
- (19) *Zoning Ordinance* means chapter 25 of the Cumberland City Code.

**Sec. 25-502. - General requirements.**

- (a) *Applicability of article XVI of Zoning Ordinance.* The permitting procedures and authorizations set forth herein in this article XVI of the Zoning Ordinance shall apply only to Small Cell Facilities and Wireless Support Structures in the Right of Way, and do not authorize the construction and operation of a Wireline Backhaul Facility.
- (b) *General requirements.* The following requirements shall apply to all Small Cell Facilities and Wireless Support Structures proposed within the Right of Way.
  - (1) *Compliance with laws.* No Person shall occupy or use the Right of Way except in accordance with the laws, rules and regulations of any federal, state or local laws, ordinances and regulations.
  - (2) *Prohibition of endangerment to public health, safety and welfare.* In occupying or using the Right of Way, a proposed Wireless Support Structure shall not endanger the health, safety and welfare of City residents, employees of the City or any other Persons. In addition to other factors, the City should consider the likelihood of the failure of such structures and the reasonably anticipated results of such a failure.
  - (3) *Small Cell Permit required.* No Person shall occupy or use the Right of Way without first obtaining any requisite consent of the City. Before placing Small Cell Facilities or Wireless Support Structures in the Right of Way, an Operator must apply for and receive a Small Cell Permit.
  - (4) *Substantial impairment of use/detrimental effects on neighboring properties.* The proposed Wireless Support Structure will not substantially impair the use of or prove detrimental to, neighboring properties, considering, among other relevant factors, the following:
    - A. The topography and elevation of the property on which such structure is proposed to be located and the appearance and visibility of such structure from neighboring and surrounding properties and from Rights of Way.

- B. The location of surrounding residences, buildings, structures and other Rights of Way and their use.
  - C. The character of the surrounding neighborhood and the Comprehensive Plan recommendations for the ultimate use of surrounding properties.
  - D. The likelihood or interference with existing radio, television, telephone or microwave reception or service.
  - E. The proposed Wireless Support Structure will cause no objectionable noise, fumes, odors, glare, physical activity or effect that would impair the peaceful enjoyment of neighboring properties.
  - F. The proposed buildings, structures and use will be in harmony with the general character of the neighborhood in which they are located.
- (5) *Interference with other Small Cell Facilities.* The City will not grant a permit or other authority for installation of small wireless facilities if the City reasonably believes the proposed installation may in any way interfere with the use and operation of an existing and operational Small Cell Wireless Facility for which the City has previously issued a permit.
- (6) *Interference with public safety equipment:* A Small Cell Wireless Facility shall be operated and maintained in a manner that does not interfere with public safety equipment.
- (7) *Interference.* The Small Cell Wireless Facility shall not interfere with City and public safety communication systems or area television or radio broadcast.
- (8) *Guy wires.* A guy wire or other support wire shall not be used in connection with an Antenna, Antenna array, or a non-tower Wireless Support Structure except when used to anchor the Antenna, Antenna array, or non-tower supports structure to an existing building or ground to which such Antenna, Antenna array, or non-tower Wireless Support Structure is attached.
- (9) *City-owned poles.* A Small Cell Facility shall not be attached to a City-owned pole or other utility pole that is owned and maintained by the City except as may be authorized by the City Council, in their sole discretion. This provision shall take precedence over any provision to the contrary in that City Council permission is required in all instances where attachment to City-owned poles is sought.
- (C) *Small Cell Facilities a permitted use on all public property.* Small Cell Facilities may be located on the exterior of public property or attached to existing Wireless Support Structures owned or operated by the City and such Small Cell Facilities shall be a permitted use in all zoning districts. The Use Regulations Table in section 25-132 of the Zoning Ordinance shall be amended accordingly. The terms of this subsection shall take precedence over all other terms to the contrary in the Cumberland City Code and this Zoning Ordinance.



**Sec. 25-503. - Application and approval process.**

(A) *Pre-application conference.*

(1) The City requires pre-submittal conferences to meet with potential Applicants and discuss projects on a conceptual level. The conference is intended to identify the correct application type and content requirements for any given project, and also to create an informal forum in which Applicants and the City can discuss any concerns that should be addressed as soon as possible to avoid any unnecessary delays in the processing of an application and deployment of wireless facilities in the City. The requirement for a pre-submittal conference may be waived by the Director of Community Development or City Administrator based on necessity and/or prior experience with the Applicant.

(2) An appointment is required for all pre-submittal conferences.

(B) *Application Required.* Prior to installation, modification, relocation or removal of a Small Cell Facility, relocation or removal of an existing Wireless Support Structure, installation of a new Wireless Support Structure, or Collocation on an existing Wireless Support Structure in the Right of Way, the Operator shall apply to the City and receive approval from the City.

(C) *Required application materials.* Unless otherwise required by state or federal law, the application shall be submitted to the City Administrator with the applicable fee and all required materials and information in accordance with the requirements of this Article XVI of the Zoning Ordinance and the Design Guidelines in order for the application to be considered complete. The application shall include the following:

(1) The applicant's name, address, telephone number and e-mail address and the same information for the person who is making the application on behalf of the operator.

(2) The names, addresses, telephone numbers and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.

(3) A description of the proposed work and the purposes the Small Cell Wireless Facilities are intended to serve. The scope and detail of such description shall be commensurate with the nature and character of the work to be performed

(4) Authorization for any consultant acting on behalf of the applicant to speak with City officials and employees on the subject matter for which the consultant is employed, even if the applicant is not present.

(5) Verification from an appropriate professional that the Small Cell Wireless Facility will comply with all applicable codes to address threats to destruction of property or injuries to persons.

(6) Drawings and descriptions of the proposed Small Cell Wireless Facilities, Wireless Support Structures, and accessory equipment.

- (D) *Proof of licensure/legal compliance.* The applicant shall provide proof that it is a licensed provider and will comply with all applicable federal, state and City laws and regulations, including those regarding wireless communications services. The Applicant shall also provide proof that it is in good standing with the state where its principal office is located and that it is registered to do business in the State of Maryland. The Applicant must maintain its good standing status and registration in Maryland for so long as the permit is in effect.
- (E) *Application processing fee.* For processing an application for consent, the City may charge an application fee of \$500.00 for up to five (5) Small Cell Facilities with an additional \$100.00 for each additional Small Cell Facility.
- (F) *Insurance requirements.* The Applicant shall maintain general liability insurance coverage in the amount of \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate per occurrence, which names the City as an additional insured and provides for advance notification to the City in the event the policy is cancelled, terminated or not renewed. The Application must be accompanied by a certificate from the insurer evidencing these coverages and, if a Small Cell Permit is issued, the Operator shall produce a certificate evidencing this coverage on the annual anniversary of the issuance of the permit and, from time-to-time, upon the request of the City, in effect in such amounts and for such liability as the City may require or be self-insured pursuant to the terms of this article.
- (G) *Review process.*
  - (1) Within ten (10) days of receiving an application, the City shall determine and notify the applicant in writing as to:
    - A. Whether the application is complete; or
    - B. If the application is incomplete, the documents and/or information that is missing.
  - (2) The City shall make its final decision to approve or deny the application within forty-five (45) days of the filing of the complete application. This time-frame may be tolled only by agreement of the parties or if, during the course of the review, the City determines that additional documentation or information is required from the applicant, it shall be tolled from the date the applicant is notified through the date the applicant provides the documentation and/or information.
  - (3) The City shall notify the applicant in writing of its final decision, and if the application is denied: (i) Specify the basis for denial; and (ii) Cite specific code provisions from federal, state, or local codes provisions as to why the application was denied.
  - (4) Notwithstanding the initial denial, the applicant may cure any deficiencies identified by the City within thirty (30) days of the denial without paying an additional application fee, provided the City shall approve or deny the revised application within thirty (30) days of receipt of the amended application which shall be limited to the deficiencies specified in the original notice of denial.
  - (5) If the City fails to act upon an application within the applicable time frames, the applicant, after providing written notice to the City that the application period has lapsed, shall receive a written approval notice

within ten (10) business days. However, if the City notifies the applicant of its decision in advance of the aforesaid applicant's notice, the City's decision shall stand.

- (6) An applicant seeking to construct, modify or replace a network of Small Cell Wireless Facilities may, at the applicant's discretion, file a consolidated application for up to ten (10) Small Cell Wireless Facilities and receive a single permit for multiple Small Cell Wireless Facilities.
- (7) *Appeals to Board of Zoning Appeals.* In the event such a permit is denied or conditions are imposed which are not acceptable to the applicant, it shall have the right to appeal the decision by filing a request for such an appeal no later than thirty (30) days from the date of the decision. Notice of and the reasons for denials shall be set forth in writing, mailed to the applicant by first class U.S. mail at the address set forth in its application or it may be hand-delivered to the applicant. Any conditions imposed with respect to the issuance of a Small Cell Permit shall be clearly set forth in the permit of the written document serving as a permit. Delivery of the permit shall be effected in the same manner as notices of denial.

#### **Section 25-504. - Design guidelines.**

- (A) An Antenna may be installed on streetlight or mast arms mounted on pre-existing poles, including utility and street light poles or other pre-existing exterior support structures, but the installation of taller poles or new overhead wiring to accommodate the Antennae will not be permitted without a special exception approved by the Board of Zoning Appeals. Overall, an Antenna may be installed at least twenty (20) feet from the ground in a residential zone or fifteen (15) feet from the ground in a commercial zone.
- (B) An antenna may not be installed on or within sixty (60) feet of a single-family or two-family dwelling unit.
- (C) Cable connecting the antennae to the equipment box shall be contained inside the pole or Support Structure or shall be flush mounted and covered with a metal, plastic or similar material cap matching the color of the pole or structure on which it is installed, properly secured and maintained by the applicant.
- (A) Related unstaffed equipment cabinets shall have a maximum square footage of ten (10) square feet with a maximum height of two (2) feet, and must be so located and installed in accordance with the applicable setback and other requirements of the zone in which the property is classified.
- (E) An Antenna and equipment box must be installed as a Stealth Small Cell Wireless Facility on a property within a Historic District, and the Historic Preservation Commission must review such an application.
- (F) An Antenna may be located on the exterior of public property or attached to an existing Wireless Support Structure owned or operated by the City. However, the use of any property owned or operated by the City shall be at the discretion of the City Council.
- (G) Antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.

- (H) *Sign prohibition.* A Small Cell Wireless Facility shall not display a sign unless the sign displays emergency information, owner contact information, warning instructions, safety instructions, or is otherwise required by a federal, state, or local agency. Allowed sign on a Small Cell Wireless Facility shall not exceed one (1) square foot in area.
- (I) *Light prohibited.* No lights are permitted on any monopole or Antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the City.
- (J) *No interference with Right-of-Way.* Small Cell Facilities and Wireless Support Structures shall be located so as not to: (i) create visual or physical obstructions or other conditions that are hazardous to vehicular and pedestrian traffic, including, but not limited to visual obstruction of traffic signals, signage or sight distances; and (ii) not to interfere with the use of streets, sidewalks, alleys, parkways, traffic light poles or other light poles, and other public ways and places.
- (K) *Measurement of height/maximum height.* The height of any Small Cell Wireless Facility or Wireless Support Structure shall be measured from the lowest point at which such facility or structure touches the ground; provided, that if such facility or structure is attached to a building and does not touch the ground, its height shall be measured from the lowest point at which such structure is attached to the building.
  - (1) *New/modified utility poles.* Each new or modified utility pole installed in the Right of Way shall not exceed the maximum height requirements of the Zoning Ordinance.
  - (2) *New Small Cell Wireless Facilities.* New Small Cell Wireless Facilities in the Right-of-Way shall not extend beyond the lesser of the following:
    - A. More than ten (10) feet above an existing utility pole in the Right of Way in place as of the effective date of this section; or
    - B. The height for a new utility pole under subsection (K)(1) of this section; or
    - C. Such greater height as authorized under applicable federal law.
  - (3) *Decorative poles.* A wireless provider shall be permitted to replace a Decorative Pole when necessary to Collocate a Small Cell Wireless Facility, but any replacement pole shall conform as closely as possible to the design aesthetics of the Decorative Pole being replaced and all costs of replacement shall be borne by the wireless provider, including, reimbursement for the wages and benefits of City employees who were involved in the process.
  - (4) *Small Cell Wireless Facilities.* All Small Cell Wireless Facilities must adhere to the following height requirements, except if they conflict with federal law, the federal law shall control.
    - A. *Existing structure mount.* Facilities mounted to an existing structure may not extend higher than ten (10) feet above the existing structure of the height restrictions set forth in subsection (K)(1) of this section, whichever is less



- B. *Roof mount.* Facilities mounted on a roof shall be stepped back from the front façade to the extent technically feasible in order to limit their impact on the building's silhouette. Screening panels, if used, shall not exceed five (5) feet in height above the existing building's roofline;
  - C. *Side-mount.* Facilities which are side-mounted on buildings shall be reasonably camouflaged and shall not extend above the roof line or extend more than two (2) feet from the facade of the building; and
  - D. *Miscellaneous.* Except as otherwise provided herein, the maximum height requirements of the Zoning Ordinance shall apply.
- (L) *Fencing.* A Small Cell Wireless Facility shall not be fenced.
- (M) *Design.* A Small Cell Wireless Facility shall be installed using stealth technology to the greatest extent practicable including without limitation the following:
  - (1) *Reduced visibility.* Antenna arrays, cables, and other accessory facilities used for providing the wireless service shall not be obtrusive;
  - (2) *Color.* The color of the facility shall be compatible with that of the non-tower support structure. All facilities located on buildings, roofs, or structures shall be painted or constructed of materials to match the color of the structure directly behind them to reduce the visibility of the Small Cell Wireless Facility.
  - (3) *Accessory facilities.* Accessory facilities mounted onto a non-tower support structure shall not project greater than three (3) foot, as measured horizontally, from the surface of the non-tower support structure and shall be painted or screened with materials that are a complementary color as the non-tower support structure. Cables shall travel along the exterior of a non-tower support structure.
- (N) *Setbacks.* A Small Cell Wireless Facility that is not in the public right-of-way shall comply with the building setback provisions of the zoning district in which the Small Cell Wireless Facility is located. In addition, the following setbacks shall be observed:
  - (1) Street-pole-attached and new non-tower support structures shall adhere to roadway clear zone guidelines when constructed within the Right of Way;
  - (2) Underground vaults or above-ground structures shall comply with the setback requirements of the underlying zoning district; and
  - (3) Freestanding Small Cell Wireless Facilities or equipment enclosures shall not be located between the face of a structure and a public or private street, bikeway, park, or residential development.
- (O) *Traffic signals.* A Small Cell Wireless Facility shall not be attached to a traffic signal or its equipment.
- (P) *Maintenance.* The owner of the Small Cell Wireless Facility shall promptly:
  - (1) Remove all graffiti on the particular owned Small Cell Wireless Facility at the owner's expense;
  - (2) Repair or replace any damaged equipment or poles, if owned by the small cell owner.

**Sec. 25-505. - Safety requirements.**

- (A) *Prevention of failures and accidents.* Any Person who owns a Small Cell Facility and/or Wireless Support Structure sited in the Right of Way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- (B) *Compliance with fire safety and FCC regulations.* Small Cell Facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- (C) *Changes in state or federal standards and regulations.* If state or federal standards and regulations are amended, the owners of the Small Cell Facilities and/or Wireless Support Structures governed by this article XVI of the Zoning Ordinance shall bring any facilities and/or structures into compliance with the revised standards and regulations within six (6) months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring Small Cell Facilities and/or Wireless Support Structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.
- (D) *Indemnification.* Operators who own or operate Small Cell Facilities or Wireless Support Structures in the Right of Way shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the Operator who owns or operates Small Cell Facilities and wireless service in the Right of Way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the Right of Way.
- (E) *Removal.* Every Small Cell Wireless Facility must be removed at the cost of the Operator or owner when it is no longer in use or when it has not been operated for a continuous period of six (6) months. Such a facility must be removed within ninety (90) days after receiving a removal notice from the City.
- (F) *Surety bond or equivalent financial tool for cost of removal.* An Operator or owner must procure and provide to the City a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this article. The bond must be maintained for as long as the Operator or owner has Small Cell Facilities and/ or Wireless Support Structures located in the Right of Way or on other City-owned property. The bond or equivalent financial method must specifically cover the cost of removal of unused or Abandoned Small Cell Facilities and/ or Wireless Support Structures or damage to City property caused by an

Operator or its agent of each Small Cell Facility and/ or Wireless Support Structure in case the City has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit. The particular form of any bond, funds set-aside documentation or letter of credit is subject to the approval of the City's attorney.

**Sec. 25-506. - Installation and inspection.**

- A. *Completion within 180 days.* The Collocation or new Wireless Support Structure for which a Small Cell Permit is granted shall be completed within 180 days after issuance of the Small Cell Permit unless the City and the Applicant agree to extend this period. The City will agree to an extension if the delay is caused by (a) make-ready work for a City-owned Wireless Support Structure, or (b) the lack of commercial power or backhaul availability at the site, provided that the Operator has made a timely request within sixty (60) days after the issuance of the Small Cell Permit for commercial power or backhaul services. The additional time to complete installation may not exceed a total of 300 days after the issuance of the Small Cell Permit.
- B. *Procedure for request for extension of time.* In situations when completion will not occur within 180 days after issuance of the Small Cell Permit, the Applicant may request an extension of time. Such extension request must include the length of time being requested and the reason for the delay. The extension request must be filed with the City Administrator.

**Section 25-507. - General provisions.**

- A. *As-Built Maps and Records.*
  - (1) The Operator shall maintain accurate maps and other appropriate records, including an inventory, of its Small Cell Facilities and Wireless Support Structures as they are actually constructed in the Right of Way or any other City-owned property. The inventory shall include GIS coordinates, date of installation, type of Wireless Support Structure used for installation, Wireless Support Structure owner and description/type of installation for each Small Cell Facility and Wireless Support Structure.
  - (2) The Operator shall provide a cumulative inventory of its Small Cell Facilities and Wireless Support Structures as they are actually constructed in the Right of Way or any other City-owned property within thirty (30) days of any City request therefor. Concerning Small Cell Facilities and Wireless Support Structures that become inactive, the inventory shall include the same information as active installations in addition to the date the Small Cell Facility and/or Wireless Support Structure was deactivated and the date the Small Cell Facility and/or Wireless Support Structure was removed from the Right of Way. The City may compare the inventory to its records to identify any discrepancies.
- B. *Generally Applicable Health and Safety Regulations.* All Small Cell Facilities and Wireless Support Structures shall be designed, constructed, operated and maintained in compliance with all generally applicable federal, state, and local

health and safety regulations, including without limitation all applicable regulations for human exposure to RF emissions.

**Sec. 25-508. - Annual collocation fee.**

For each attachment of a Small Cell Facility to a Wireless Support Structures owned or operated by the City or located in the Right of Way, the City may charge the Operator an annual fee of \$270.00 for attachment to a Wireless Support Structure in the Right of Way or for the right to access a Small Cell Facility in the Right of Way, subject to such restrictions as may be required by the City's Director of Public Works.

**Sec. 25-509. - Liability and signal interference.**

- A. *No Liability.* The City shall not be liable to the Operator by reason of inconvenience, annoyance or injury to the Small Cell Facilities, Wireless Support Structures, and related ground or pole-mounted equipment or activities conducted by the Operator therefrom, arising from the necessity of repairing any portion of the Right of Way, or from the making of any necessary alteration or improvements in or to any portion of the Right of Way or in or to the City's fixtures, appurtenances or equipment.
- B. *Signal Interference Prohibited.* In the event an Operator's Small Cell Facility interferes with the public safety radio system, or the City's or State of Maryland's traffic signal system, the Operator shall, at its cost, immediately cooperate with the City to either rule out the Operator as the interference source or eliminate the interference. Cooperation with the City may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing. The Operator shall reimburse the City for employee wages and benefits to the extent City employees are involved in issues pertaining to signal interference.

**Sec. 25-510. - Requirements for removal, replacement, maintenance and repair.**

- A. *Replacement of municipal-owned wireless support structure.*
  - (1) *When necessary to accommodate Small Cell Facility.* The City may require, in response to an application to Collocate a Small Cell Facility on a City-owned Wireless Support Structure, the replacement or modification of the Wireless Support Structure at the Operator's cost if the City determines that replacement or modification is necessary for compliance with construction and safety standards. Such replacement or modification shall conform to the Design Guidelines. The City may retain ownership of the replacement or modified Wireless Support Structure.
  - (2) *Accommodation of reservation of space for future public safety or transportation uses.* If the City has reserved space for future public safety or transportation uses on the City-owned Wireless Support Structure, the replacement or modification must accommodate the future use.
- B. *Removal or relocation required for City project.*
  - (1) The Operator shall remove and relocate the permitted Small Cell Facility and/or Wireless Support Structure at the Operator's sole expense to accommodate construction of a public improvement project by the City.
  - (2) If an Operator fails to remove or relocate the Small Cell Facility and/or Wireless Support Structure or portion thereof as requested by the City



within 120 days of the City's notice, then the City shall be entitled to remove the Small Cell Facility and/or Wireless Support Structure, or portion thereof at the Operator's sole cost and expense, without further notice to the Operator.

- (3) The Operator shall, within thirty (30) days following the issuance of an invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Small Cell Facilities and/or Wireless Support Structure, or portion thereof. The Operator shall be liable for the City's collection costs, including but not limited to, reasonable attorneys' fees, court costs and litigation expenses.

C. *Removal required by City for safety and imminent danger reasons.*

- (1) An Operator shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Small Cell Facility and/or Wireless Support Structure within the time frame and in the manner required by the City if the City reasonably determines that the disconnection, removal, or relocation of any part of a Small Cell Facility and/or Wireless Support Structure (a) is necessary to protect public property or the public health, safety or welfare, or (b) the Operator fails to obtain all applicable licenses, permits, and certifications required by law for its Small Cell Facility and/or Wireless Support Structure.
- (2) If the City Administrator reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Small Cell Facility and/or Wireless Support Structure at the Operator's sole cost and expense.

D. *Removal/abandonment of facilities.*

- (1) An Operator shall remove Small Cell Facilities and/or Wireless Support Structures when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of sixty (60) days of the Small Cell Facility and/or Wireless Support Structure being Abandoned, or within sixty (60) days of receipt of written notice from the City. When an Operator abandons permanent structures in the Right of Way, the Operator shall notify the City in writing of such Abandonment and the location and description of each Small Cell Facility and/or Wireless Support Structure Abandoned. Prior to removal, the Operator must make application to the City and receive approval for such removal. The City may require the Operator to complete remedial measures necessary for public safety and the integrity of the Right of Way.
- (2) The City may, at its option, allow a Wireless Support Structure to remain in the Right of Way and coordinate with the owner to transfer ownership of such Wireless Support Structure to the City, instead of requiring the owner and/or Operator to remove such Wireless Support Structure.

E. *Restoration.* An Operator shall repair any damage to the Right of Way, any facilities located within the Right of Way, and/or the property of any third party

resulting from the Operator's removal or relocation activities (or any other of Operator's activities hereunder) within ten (10) calendar days following the date of such removal or relocation, at the Operator's sole cost and expense. Restoration of the Right of Way and such property must be to substantially the same condition as it was immediately before the date Operator was granted a Small Cell Permit for the applicable location, or did the work at such location (even if Operator did not first obtain a Small Cell Permit). This includes, but is not limited to, restoration or replacement of any damaged trees, shrubs, or other vegetation. Such repair, restoration and replacement shall be in accordance with any City standards and subject to its the sole reasonable approval.

**Sec. 25-511. - Effect of partial invalidity.**

The provisions of this article XVI of the Zoning Ordinance are hereby declared to be severable, and if any section, subsection, or clause of this article is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other portions of this article that can be given effect. Further, to the extent that any such provision is otherwise severable, a court of competent jurisdiction may reform that provision to effect the intent of the City if it is possible to do so in such a manner that the resulting provision would not be severable.

**Sec. 25-512. – Penalty.**

- (A) Failure to comply with any provision of this article shall be a municipal infraction, subject to a fine in the amount of \$250.00 per day for each day the violation continues.
- (B) In addition to the fine, the City may revoke the Small Cell Permit(s) which is/are the subject of the municipal infraction, it may request injunctive relief to compel performance of the violated provision, and it may pursue any and all remedies which may be available to it at law or in equity. These remedies are cumulative.